IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 513 of 1997
with
COMPANY APPLICATION NOS. 515/97, 516/97 AND 530/97

in

COMPANY PETITIONNo 224 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE BANK OF INDIA

Versus

ENGG. MAJDOOR SANGH

Appearance:

MR RM DESAI, MR ASHOK L SHAH,
MR JA ADESHARA AND MR UYPADHYAY for Applicants
NOTICE SERVED for Respondent No. 1
OFFICIAL LIQUIDATOR for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/12/2000

CAV JUDGEMENT

Some of the creditors of Beclawat of India Limited filed Company Petition Nos. 62, 63, 64 of 1991 for winding up the Company as it was unable to pay its debts. By order dated 2.12.1999 the Company was ordered to be wound up and the Official Liquidator was appointed as Liquidator of the Company in liquidation.

2. Engineering Majoor Sangh, Baroda, acting through K.W. Desai, filed Company Application No. 104 of 1994 before this Court proposing a scheme of compromise and arrangement between the workers of the said Company (in liquidation) as well as the unsecured creditors and other interested parties. By order dated 6.3.1995 this Court directed the applicant i.e. Engineering Majoor Sangh to convene meeting of class of creditors but observed that the meeting will be held after giving due notice to the secured creditors. The Chairman of the meeting submitted his report. Thereafter, Engineering Majoor Sangh, acting through Shri K.W. Desai filed Company Petition No. 224 of 1996 praying for sanction of the scheme of compromise or arrangement by virtue of Section 394 of the Act. An impression created by the applicant in the said application was that there were no secured creditors of the Company in liquidation. In paragraph 12 of the said application it was specifically mentioned that "notice of this petition need not be served on any person. Consequently, by order dated 23.9.1997 this Court allowed the petition and sanctioned the scheme presented by the Engineering Majoor Sangh, Baroda, acting through Shri K.W. Desai without issuing any notice to any party. The Court also passed order directing the Official Liquidator to handover the assets to the said applicant Union after making complete inventory thereof.

3. State Bank of India, Shareholders of the Company and unsecured creditors of the Company in liquidation filed the above numbered Company Applications for review of the order dated 23.9.1997 on various grounds including non-convening the meeting of secured creditors, unsecured creditors and shareholders and also for non-compliance of the provisions of the Act and the Company Court Rules. The applicants in the review application prayed for the main reliefs:

(i) This Court may review, quash and set aside the order dated 23.9.1997 sanctioning the Scheme of Compromise and/or arrangement proposed by the Engineering Majoor Sangh.

(ii) This Court may direct appropriate action to be initiated against Shri K.W. Desai of

Engineering Majoor Sangh for making false statements on affidavit, concealing material facts, practising fraud on the Court and misleading this Court.

4. After hearing learned counsel for the applicants in the Review Applications for some time and after hearing the reply arguments of Shri K.W. Desai for some time, this Court had indicated to Shri K.W. Desai appearing for the workers Union that in view of the non-compliance of the statutory provisions under Section 391(1) of the Companies Act and Rule 80 of the Company Court Rules where there was any plausible prayer for review should be opposed and that the Court was prepared to consider the prayer for review separately from the prayer for taking any action against Shri K.W. Desai for making false statements on affidavit, concealing material facts, practising fraud on the Court and misleading the Court. This Court had even indicated Mr. K.W. Desai that if he admits his mistake in persuading the Court to pass order dated 23.12.1999 and gracefully agrees to the order dated 23.12.1999 being reviewed and set aside, this Court was even prepared to take a lenient view vis-a-vis the second prayer of the applicant in the review application which is already indicated hereinabove. However, Mr. K.W. Desai, persisted with his untenable argument to oppose the prayer for review and wasted at least four hours of valuable judicial time. Ultimately, by order and judgement dated 2.12.1999 this Court granted the first prayer i.e. review and set aside the order dated 23.9.1997 in Company Petition No. 224 of 1996 and adjourned hearing of the application in respect of second prayer to 22.12.1999 specifically observing as under :-

"16. The question as to what costs should be awarded to the applicants and from whom, shall be considered at the next date of hearing while considering the question whether any action is to be taken against Mr K.W. Desai. The Court cannot, however, help observing that even after the Court had pointed out to Mr K.W. Desai appearing for the Union that in view of the admitted non-compliance with the mandatory statutory provisions of Section 391(1) of the Companies Act, 1956 and Rule 80 of the Company Court Rules, whether there was any possible ground on which the prayer for review could be opposed and that the Court was prepared to consider the prayer for review separately from the prayer for taking any action against Mr. Desai; even then Mr K.W. Desai wasted

considerable time of this Court by persisting with untenable arguments in respect of the prayer for review and thereby wasted about four hours of valudable judicial time."

However, Shri K.W. Desai sent telegram addressed to me personally that he was "Self not well cant travel Labourers informed about adjournment on dated 30.12.1999 Regret Advised five days rest suffering attack of diabetes please adjourn company applications Nos. 513, 515, 516 and 530 of 1997 in Company Petition No. 224 of 1996. Registry may kindly be ordered to inform next date well in advance and for this act of justice respondent shall pray earnestly". This Court, therefore, adjourned hearing of the application to 30.12.1999. Again Shri K.W. Desai sent a telegram addressed to me personally in the following words. "Self not well can?t travel please adjourn company application Nos. 513, 515, 516 and 530 of 1997 in Company petition No. 224 of 1996. Registry may kindly be ordered to inform next date well in advance and for this act of justice respondent shall pray earnestly." None of the workers whom Shri K.W. Desai claims to represent appeared to make any request for adjournment. Thereafter, the hearing of the application was adjourned from time to time and ultimately hearing was adjourned to 3.3.2000. On 3.3.2000 also Shri K.W. Desai did not appear nor was any request made by or on his behalf for adjournment. Ultimately, the Court was constrained to pass order issuing a bailable warrant in the sum of Rs. 2000/- to secure presence of Shri K.W. Desai on 24.3.2000. The warrant was sought to be served at the address which was mentioned in the Review Application at which address Shri K.W. Desai was earlier served but the warrant was returned unserved on the ground that Shri K.W. Desai would be available at Anand and not at Baroda. Hence again on 7.4.2000 the Court passed another order for issuing bailable warrant to secure the presence of Shri K.W. Desai on 28.4.2000. Since the warrant could not be served even then on 28.4.2000 the Court adjourned the hearing of the application to 16.6.2000 and returnable date for service of bailable warrant was extended. On 16.6.2000 Shri K.W. Desai appeared through senior advocate Shri M.R. Barot and prayed for time to file an affidavit for tendering an apology. Accordingly, the hearing was adjourned to 23.6.2000. On that date, an affidavit dated 22.6.2000 of Shri K.W. Desai was tendered. The affidavit is on record and therefore it is not necessary to reproduce the contents thereof. The learned counsel for the Review Application had submitted that so-called apology being

tendered by Shri K.W. Desai did not appear to be genuine or sincere and that in any case it did not deal with the second prayer in Review Application that Shri K.W. Desai had made false statements in the petition for sanction of the scheme in Company Petition No. 224 of 1996. At the request of Shri Barot the hearing of this application was adjourned to 30.6.2000, on which date Shri K.W. Desai tendered his affidavit which is on record. Thereafter, the hearing of the application was adjourned to 7.7.2000 to enable learned counsel for the parties to make their respective submissions.

5. Having perused the relevant record and heard the learned counsel for the parties, this Court is of the view that Shri K.W. Desai had made incorrect statements in Company Petition No. 224 of 1996 which led the Company Judge then hearing the petition to pass the orders dated 23.9.1997 for sanctioning the scheme, compromise and arrangement proposed by Engineering Majoor Sangh through Shri K.W. Desai. In this connection, the following observations made by the Hon'ble Supreme Court in the case of DHANANJAY SHARMA VS. STATE OF HARYANA AND OTHERS reported in (1995) 3 SCC 757 are required to be considered (at page 758) (AIR 1995 SC 1795).

"Any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any Court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake

> public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a Court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the Court and interfere with the due course of judicial proceedings or the administration of justice."

In the aforesaid case a taxi driver had filed a false affidavit before the Hon'ble Supreme Court. Thereafter, he filed a further affidavit stating that false statements made before the Hon'ble Supreme Court both orally and through his affidavit, were not voluntary and that he was acting under pressure of respondent Nos. 4 and 5, Police Officers. Hon'ble Supreme Court did not exonerate him on that ground. Even though he was repentant, he was not allowed to go scot free. In CHANDRA SHASHI VS. ANIL KUMAR VERMA (1995) 1 SCC 421 the Apex Court found that where apology tendered by a contemner was not a product of remorse or contrition it does not merit acceptance. An apology merely to get protection against rigours of law is no apology. Apology cannot be used as a weapon of defence to get purged of the gulit. If the contemner tenders apology which was defective such apology cannot be accepted.

In my opinion, Shri K.W. Desai had misled this Court for passing the impugned order dated 23.9.1997 for sanctioning the scheme of compromise by misleading the Court about absence of secured creditor. The tenor of making averments in Company Petition No. 224 of 1996 indicates that the deponent of the petition was aware of the fact that there were secured creditors and that something was being kept away from this Court but the deponent was trying cleverly to guard his statement being branded as a false statement and therefore without joining anyone Shri K.W. Desai created an impression that there was no secured creditor and even misled the Court in dispensing with the publication of public notice required by Rule 80 of the Company Court Rules.

6. Affidavit of Shri K.W. Desai running into 117 pages in reply to Company petition No. 513 of 1997 shows

the manner in which and the length to which Shri K.W. Desai has gone for supporting order dated 23.9.1997 which was not tenable for the reasons already given in the judgement dated 2.12.1999.

7. The Court would also like to observe at this stage that the Official Liquidator was also served with a copy of the petition in Company Petition No. 224 of 1996 and he was also heard when the Court passed order dated 23.9.1997. It appears from the order dated 23.9.1997 passed by the Company Court (Coram: S.D. Dave, J) that the Official Liquidator did not controvert the averments made in the application and did not point out that State Bank of India was a secured creditor and that notices were also required to be issued to the secured creditors, unsecured creditors and also to the shareholders and that the legal requirements were not complied with. Unfortunately, he also did not point out these facts and helped the applicant Shri K.W. Desai in misleading the Court. Hence, the Court is also of the view that action is also required to be taken against the Official Liquidator for misleading this Court.

8. However, considering the fact that considerable time has elapsed since the Engineering Majdoor Sangh acting through Shri K.W. Desai filed Company Petition No. 224 of 1996 and also considering the fact that the order dated 23.9.1997 obtained by the said party by misleading the Court has already been recalled on 2.12.1999, this Court is not inclined to refer this matter to the Bench taking up matters under the Contempt of Courts Act, 1971, but as recorded in the order dated 2.12.1999, the question is what order should be passed regarding costs.

9. In the peculiar facts and circumstances of the case, it appears to the Court that the interests of justice would be served if Mr K.W. Desai is directed to pay the applicants in each of these four applications a sum of Rs.10,000/- (Rupees Ten thousand only) and the Official Liquidator shall also pay a sum of Rs.5,000/(Rupees Five thousand only) to the applicants in each of these applications. The amounts shall be paid within one month from today failing which they shall be liable to be proceeded with in accordance with law.

As far as the costs to be paid by the Official Liquidator are concerned, the same shall first be paid by the Official Liquidator to the applicants and then shall be reimbursed by the concerned officer/employee who may be found to be remiss in the discharge of his duties at

the relevant time.

(M.S. SHAH, J)

(pkn)